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Serial No. 10/083,656 filed February 25, 2002
Response of February 12, 2007
to Office Action of January 19, 2007

Remarks

Receipt is acknowledged of the Office Action dated January 19, 2007 in the above-captioned matter, setting forth an Interview Summary. As a reply to the last Office Action had already been filed by that date, applicant is filing the present response within one month of the January 19th Office Action. (As a result, it is believed that no extensions or fees are required, but should any be necessary, whether based on the August 10, 2006 Office Action or otherwise, they are hereby requested and the Commissioner is authorized to charge all amounts to Deposit Account 50-1604).

A summary of the substance of the interview is as follows: counsel had contacted the Examiner to briefly: (a) discuss the issues raised regarding the "finger grips"; and (b) discuss claim 1 in the final rejection mailed August 10, 2006, so as to obtain clarification as to the features referred to in the Office Action as presenting allowable subject matter.

With respect to the finger grips limitation, it is believed that agreement was reached that the feature was supported by the originally filed specification and that amendment to place a reference numeral in the specification and drawing would overcome the issues raised in the Office Action.

With respect to claim 1, the purpose of the call was to allow counsel to determine whether to amend claim 1, or to cancel claim 1 and its dependents (for further pursuit in a continuation application). Counsel had submitted that the following features in claim 1 would present patentable subject matter: a combination of a no-spill drinking apparatus having a valve, wherein a post extends through an opening in a flexible material, and wherein the flexible material begins to invert upon application of negative pressure to that flexible material. As a result, counsel proposed

Serial No. 10/083,656 filed February 25, 2002
Response of February 12, 2007
to Office Action of January 19, 2007

amendment of claim 1 to include those limitations, and the Examiner indicated he would review the proposed language.

Counsel would also like to clarify herein that his reference to a post during the interview meant a post in general (not a tapered one), as it was respectfully not our intent to place a tapering feature into claim 1. (Thus, claim 1 in the response of January 18, 2007 does not have a tapering limitation). Claim 1 is submitted to be patentable since the art does not teach or suggest a no-spill drinking apparatus having a post extending through an opening in a flexible material, wherein the flexible material begins to invert upon application of negative pressure to that flexible material (whether or not the post is tapered).

Please note, as well, that by "negative pressure", applicant is referring to the plain meaning of the term, namely, that pressure decreases (goes below ambient atmospheric pressure). This is mentioned since Defendants who were sued for infringement of the parent '931 and '620 patents contended that creation of internal overpressure (positive pressure) within a container, e.g. by squeezing the container or by buildup of gas therein, is the same as application of negative pressure by sucking on the spout.

However, in fact, the two are opposites - negative pressure results in a pressure which is less than ambient atmospheric pressure, while internal overpressure produces a pressure greater than ambient atmospheric pressure. The claims recite application of negative pressure, which is a decrease in pressure, and not application of 'positive pressure' or 'internal overpressure', which constitute an increase in pressure.

Serial No. 10/083,656 filed February 25, 2002
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That the term "negative pressure" in the claims means a decrease in pressure resulting in a pressure below ambient atmospheric pressure is fully consistent with the meaning provided in the specification of this application and its parent patents. *See e.g.*, U.S. Patent No. 6,357,620 at col. 1 line 55-60 (explaining that sucking at the spout creates negative pressure or a partial vacuum). Defendants would have the claims rewritten to cover any pressure differential, which is not what is recited in the claim language.

In the event that the Patent Office believes that the claim term negative pressure includes positive pressure or internal overpressure (pressure higher than ambient atmospheric pressure), it is requested that a statement to that effect be placed in the record. Otherwise, it should be understood from the record that this claim term does not so cover and has not previously so covered.

It is also noted that in prior litigation, Defendants particularly relied upon the Italian '286 and EPA '828 references against the parent '620 patent. All of the pending claims are fully patentable over both of those references and the remaining art of record.

Among other features, claim 1 requires a post extending through a flexible membrane, wherein the flexible material begins to invert upon application of negative pressure. An example of a flexible material beginning to invert would be a membrane which goes from a concave shape towards convex (or vice versa). Likewise, put in another way, in a bowl-shaped membrane which begins to invert, the inside of the bowl moves towards the outside, and the outside of the bowl moves towards the inside (the membrane begins to turn 'inside out').

Serial No. 10/083,656 filed February 25, 2002
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The Italian reference does not teach or suggest this. The IT '286 device does not have a membrane which begins to invert, and there is no discussion of inversion in the specification. As shown in Figures 1, 2 and 5, IT '286 alleges that the opening 9 in material 8 expands during drinking. The material 8's inside surface does not move toward the outside with the outside surface moving towards the inside. Thus, the Italian reference does not teach or suggest the recited feature of the claim, even assuming that the device could function as alleged (which applicant, in fact, disputes, as it is submitted that the device disclosed would not work).

Likewise, EPA '828 also does not teach or suggest the subject matter of the claims. EPA '828 does not teach or suggests a post extending through a flexible membrane wherein the membrane begins to invert upon application of negative pressure. As shown, for example, in Figures 1-2 and 3-4 of EPA '828, when a configuration is provided with a core 5 through a disk 6, the disk 6 does not begin to invert. The material's inside surface does not move toward the outside with the outside surface moving towards the inside. It never moves from concave towards convex or vice versa.

Furthermore, the EPA reference is not a no-spill drinking cup, and is not even analogous art thereto. The reference relates to a valve for a coffee container (*see*, col. 1 lines 25-28), or to a squeeze bottle for dispensing shampoo, liquid soap, or so forth (*see*, col. 4 lines 36-41). Such devices do not teach or suggest no-spill drinking cups and are not relevant to them. For example, if one were to squeeze the EPA device while it were upside down, or if a child were to roll over on the device while in the crib, liquid would spill out, which is exactly what one does not want with a no-spill drinking cup. This would occur because the EPA device operates via application of positive

Serial No. 10/083,656 filed February 25, 2002
Response of February 12, 2007
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pressure (overpressure within the container), in contrast to the present claims which recite a device that operates based on negative pressure applied to the flexible membrane.

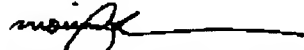
With respect to dependent claim 5, it is submitted that none of the references of record teach or suggest a device as recited therein, including an anti-inversion member. Likewise, with respect to independent claims 28 and 48 (and the claims dependent thereon), it is submitted that the art does not teach or suggest a device as recited therein, including a flexible material which hits a valve subunit upon application of negative pressure.

Accordingly, it is submitted that all of the claims are fully patentable. Favorable action on the application is respectfully requested.

Lastly, should the Examiner have any questions regarding the application or be contemplating any action that could require further prosecution, a telephonic or in-person interview is requested so that any further issues can be quickly addressed and/or an Examiner's Amendment entered, so as to complete prosecution and forward the application to issuance.

Dated: February 12, 2007

Respectfully submitted,



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